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IN THE

Supreme Court of the United States

October Term, 1967.

No. 976.

TOWNSHIP OF HAMILTON TOWNSHIP, in the County of Atlantic, a Municipal Corporation of the State of New Jersey, and WILLIAM DAVIES, NICHOLAS RETTINO, ROBERT J. KLEUSER, MICHAEL BUTLER, and ROBERT H. MORRIS, individually, as Citizens and Taxpayers of Atlantic County, and as members of the Hamilton Township Committee,

Petitioners,

vs.

BOARD OF CHOSEN FREEHOLDERS of the County of Atlantic and G. T. B. COMPANY, a partnership, and ELIAS G. NAAME and HERMAN ORMAN, individually, and as partners, and EDWIN H. HELFANT, Guardian Ad Litem for JOSEPH E. NAAME, an infant, and ATLANTIC COUNTY BAR ASSOCIATION,

Appellees-Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey.

BRIEF OF APPELLEES-RESPONDENTS, BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ATLANTIC AND ATLANTIC COUNTY BAR ASSOCIATION,

ISAAC C. GINSBURG,
Attorney for Appellees-Respondents, Board of Chosen Freeholders of the County of Atlantic and Atlantic County Bar Association,
218 Guarantee Trust Building,
Atlantic City, New Jersey.

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STATEMENT OF QUESTION INVOLVED.

Does the place of holding court in a state involve any federal question?

STATEMENT OF THE CASE.

The petitioners filed an action in the Law Division of the Superior Court of New Jersey, alleging that the Freeholders of Atlantic County, New Jersey, were about to enter into a lease for court facilities in Atlantic City in said county and state. (Complaint, Appendix A, page 12.)

The petitioners alleged in the cited complaint that they "question the authority of the defendant, Board of Chosen Freeholders of Atlantic County to establish permanent court facilities as proposed in any place other than the County Seat of Atlantic County * * *". (Appendix A, page 13, para. 6 of complaint.)

The Supreme Court of New Jersey, in a per curiam opinion, dismissed petitioners' contention as without merit.

The petitioners seek the allowance of a writ of certiorari to review the holding of the New Jersey Supreme Court on the basis of the provisions of U. S. Statute, 28 U. S. C. A. 1257 (3).

The respondents oppose the granting of such writ, and move the Court to deny the allowance of the writ and to dismiss the petition for failure to present a federal question.

LAW AND ARGUMENT.

I. No Federal question was presented to the New Jersey Supreme Court for decision.

The rules of practice for the New Jersey Supreme Court make provision for the proper presentation of questions

for decision as a prerequisite to consideration of issues by the court.

R. R. 1:7-1, partially provides that

> "the brief of the appellant shall contain the following matters * * *
>
> (c) a statement of the questions involved * * *
>
> The foregoing requirements are to be considered in the highest degree mandatory, admitting no exceptions; ordinarily no point will be considered which is not set forth in or necessarily suggested by the statement of questions involved."

The petitioners failed and neglected completely to indicate in their "Statement of Questions Involved" in their Brief before the New Jersey Appellate Court that any federal question was involved in the cause before the court for adjudication.

We here repeat the "Statement of Questions Involved" as recited in petitioners' brief before the New Jersey Supreme Court (Page 1, Brief of Appellants—Petitioners in New Jersey Appellate Court):

> "1. Should a judge who has previously issued an Order which is involved in current litigation before him disqualify himself from hearing the current cause." (This is not now presented to this Court as an issue.)
>
> "2. Where there is an admitted urgent need for permanent court facilities of a Constitutional County Court in a County, may such permanent facilities be located in a place other than at the County Seat as a matter of law." (The Constitution referred to is the N. J. Constitution, not the U. S. Constitution.)
>
> "3. May a County Board of Chosen Freeholders enter into a lease for permanent court facilities of a constitutional County Court at a location other than at the County Seat as a matter of law."

It is obvious that there was no attempt to indicate to the Appellate Court below that there was a desire by these petitioners to present a question having federal overtones.

Nor is there any discussion in the petition filed in this Court to indicate the federal questions involved.

It is incumbent upon the petitioners to indicate that the federal question contended for was properly presented to the state court for adjudication. *Citizens Savings Bank v. Owensboro,* 173 U. S. 636, 19 S. Ct. 530, 43 L. Ed. 840 (1899). *Edelman v. California,* 344 U. S. 357, 73 S. Ct. 293, 97 L. Ed. 387 (1952).

This court is always wary of assuming jurisdiction of a case from a state court, unless it is plain that a federal question is necessarily presented, *Department of Mental Hygiene of Cal. v. Kirschner,* 85 S. Ct. 871, 380 U. S. 194, 13 L. Ed. (2) 753 (1965), and the burden is upon petitioner to show that a federal question is involved in the case presented. Ibid.

The passing mention of the U. S. Constitution in the brief of these petitioners in the state court would be inadequate. *Thomas v. Iowa,* 28 S. Ct. 487, 209 U. S. 258, 52 L. Ed. 782 (1908); *Louisville v. Smith,* 27 S. Ct. 401, 204 U. S. 551, 51 L. Ed. 612 (1907); *Durley v. Mayo,* 176 S. Ct. 806, 351 U. S. 277, 100 L. Ed. 1178 (1956); *Slagle v. Ohio,* 81 S. Ct. 1076, 366 U. S. 259, 6 L. Ed. (2) 277 (1961); *Michael v. Louisiana,* 76 S. Ct. 158, 350 U. S. 91, 100 L. Ed. 83 (1955); *Shelley v. Kraemer,* 68 S. Ct. 836, 334 U. S. 1, 92 L. Ed. 1161 (1948); *Lassiter v. Northampton,* 79 S. Ct. 985, 360 U. S. 43, 3 L. Ed. (2) 1072 (1959).

The record must reveal that the federal question was raised in the State Court. *Wilson v. Cook,* 66 S. Ct. 663, 327 U. S. 474, 90 L. Ed. 793 (1946); *Whitney v. California,* 47 S. Ct. 641, 274 U. S. 357, 71 L. Ed. 1095 (1927).

And the Supreme Court of New Jersey made no findings involving federal law, *Herb v. Pitcairn,* 324 U. S. 117, 89 L.

Ed. 789, 65 S. Ct. 459 (1945); *Charleston v. Alderson*, 324 U. S. 182, 89 L. Ed. 857, 65 S. Ct. 624 (1945), with the result that this court will not review that decision. Ibid.

II. The issue involved turns upon a local, non Federal question.

As support for the present application the petitioners cite *Griswold v. Connecticut*, 381 U. S. 479, 14 L. Ed. (2) 510, 85 S. Ct. 1678 (1965), which we conceive is in no way applicable or pertinent to the present factual or legal situation.

The holding by this Court in *Griswold*, was that a state statute making it a criminal offense for a married couple to use contraceptives was invalid as an invasion of privacy, the court stating:

> "The present case, then concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees."

We conceive that there is no doubt that the ninth and the tenth amendments to the U. S. Constitution preserve to the people their natural and personal rights. We agree that such rights may not be abridged by either the State or the Federal Government.

But the right to have a court located at a certain place or at the county seat is neither a personal or a natural right.

This Court pointed out in *Bute v. Illinois*, 333 U. S. 640, 65 S. Ct. 763, 92 L. Ed. 986 (1947):

> "* * * the reserved powers of the states and of the people were emphasized in the ninth and tenth amendments. The Constitution was conceived in the spirit of the Declaration of Independence which declared that to secure such 'unalienable rights' as those of 'Life,

> Liberty, and the pursuit of Happiness * * * Governments are instituted among men deriving their just powers from the consent of the governed * * *.' While there have been modifications made by the states, the congress and the courts in some of the relations between the Federal Government and the people, there has been no change that has taken from the States their underlying control over their local police powers and state court procedures. They retained their control from the beginning, and, in some states, local control of these matters long antedated the constitution. * * * The differing needs and the customs of the respective states and even of the respective communities within each state emphasize the principle that familiarity with and complete understanding of local characteristics, customs and standards are foundation stones of successful self government."

And the question of the place of holding court is purely a question of administration and expediency to be decided by the proper division of the local government.

Where the place of holding court is fixed by the State Constitution or Statute, the court must be held there. 20 Am. Jur. (2) 414. But where the place of holding court is not so fixed, the court may properly be held at any place within the territorial ambit of its jurisdiction which it elects for this purpose. Ibid.

And this is a matter which is to be decided locally, and is in nowise controlled by the Federal Constitution or Statutes.

As stated by Justice Frankfurter while sitting in circuit in *Uphans v. Wyman*, 81 S. Ct. 22, 5 L. Ed. (2) 29 (1960), where the question was the proper construction of a statute in New Hampshire:

> "The essential contention on which review is proposed to be sought here is thus a local, non federal

question howsoever paraphrased in intricate, subtle terms."

III. The provisions of the Ninth Amendment to the United States Constitution are in no way involved.

The power to create state courts is in the states, and may be utilized in any way which the state constitution or statute provides, 20 Am. Jur. (2) 407, Courts, Section 27. See also section 18 at page 401.

And this Court will not inquire into the rules of practice of the state courts, nor attempt to control them. *Wagner v. Lyndon,* 43 S. Ct. 589, 262 U. S. 226, 67 L. Ed. 961, cert. den. 43 S. Ct. 361, 261 U. S. 614, 67 L. Ed. 827.

Thus it has been held that question of rights under a state constitution are for the exclusive determination of the state courts. *State ex rel. Dyer v. Sims,* 71 S. Ct. 559, 341 U. S. 22, 95 L. Ed. 713.

Nor will this court take jurisdiction if the state court has erroneously construed a state statute, *Washington v. Marieopa,* 152 F. (2) 556, cert. den. 66 S. Ct. 900, 327 U. S. 799, 90 L. Ed. 1024, nor will the validity of a state statute under the state constitution create a federal question. *Utley v. City of St. Petersburg,* 292 U. S. 106, 54 S. Ct. 593, 78 L. Ed. 1155 (1933); *Rindge v. Los Angeles,* 262 U. S. 700, 43 S. Ct. 689, 67 L. Ed. 1186 (1922).

Not only is there no constitutional right of the people to designate the place of holding court, 20 Am. Jur. (2) 400, Courts, Section 17, but there is no federally given right to vote at all. The right to vote is conferred by the state and not by the constitution of the United States or any act of Congress. *Breedlove v. Suttes,* 302 U. S. 277, 58 S. Ct. 205, 82 L. Ed. 252 (1937); *Minor v. Happersett,* 88 U. S. 162, 22 L. Ed. 627 (1875).

It is clear, therefore, that any argument or contention that the denial of the right to vote for a county seat or for a place of holding court is without merit whatever, and certainly presents no federal question.

The Statute of New Jersey on which the petitioner relies as the basis of the federal question giving this court jurisdiction in no way involves a constitutional problem, and as was pointed out by the New Jersey Supreme Court, that statute is not involved whatever in the particular facts in this case.

The question with which we are concerned here was aptly stated by the present petitioners in their brief in the State Court:

> "1. * * *
>
> 2. Where there is an admitted urgent need for permanent court facilities of a constitutional county court in a county, may such permanent facilities be located in a place other than at the County Seat as a matter of law?
>
> 3. May a County Board of Chosen Freeholders enter into a lease for permanent court facilities of a constitutional county court at a location other than at the County Seat as a matter of law."

Obviously no question of the removal of the county seat from one place to another was involved. And if there were, it still would not present a question within the jurisdiction of this Court. Cf. 20 C. J. S. 809, Counties, section 54.

The Supreme Court of New Jersey disposed of petitioners' contention as to the applicability of N. J. S. A. 40:19-1, et seq., as follows:

> "Contrary to plaintiffs' position, we find nothing in the law which requires that the courtroom facilities had to be located at the county seat. Our State Constitution carries no such requirement, nor does our

> statute law. Plaintiffs rely on L. 1918C 185, now N. J. S. A. 40:19-1 to 9. The provisions of that act are inapplicable; they deal with a situation where the county electorate has voted to change the location of the county seat, in which case the courts are to be established at that place." (Appendix A, page 21, Opinion.)

And though the State Court may be mistaken in its conclusions, this court will not act as an appellate court to review state court errors where no federal question is involved. *Rindge v. Los Angeles County,* 262 U. S. 700, 43 S. Ct. 689, 67 L. Ed. 1186 (1922), supra. *Memphis and Charleston v. Pace,* 282 U. S. 241, 51 S. Ct. 108, 75 L. Ed. 315 (1930).

CONCLUSION.

No federal question was presented to the State Court for decision. Nor was such question properly raised as required by the Rules of Practice of the New Jersey Courts.

No federal question is here involved, nor is a violation of the ninth amendment to the Federal Constitution demonstrated.

In any event the question here involved is moot by reason of the withdrawal of the proposed lessor in the lease negotiations for the erection of courtroom facilities. *Doremus v. Board of Hawthorne,* 70 S. Ct. 394, 342 U. S. 429, 96 L. Ed. 475 (1952); *Richardson v. McChesney,* 31 S. Ct. 43, 218 U. S. 487, 54 L. Ed. 1121 (1909).

As a result there is no merit to the questions presented to this court; there is no issue of which this court will assume jurisdiction; and no constitutional or federal questions are involved.

The petition for writ of certiorari should be dismissed and the application denied.

Respectfully submitted,

ISAAC C. GINSBURG,
Attorney for Board of Chosen Freeholders of the County of Atlantic, and Atlantic County Bar Association.